SUPREME COURT, U. S.

FILED

OCT 23 1973

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM,1973

No. 73-347

PHILLIPS PETROLEUM COMPANY,
a Corporation,
Petitioner,

vs.

TEXACO INC., a Corporation,
Respondent.

OBJECTION OF TEXACO INC. TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OUT OF TIME

PHILIP R. WIMBISH*
ELMER W. ADAMS
P. O. Box 2420
Tulsa, Oklahoma 74102
Attorneys for Respondent
Texaco Inc.

*Counsel upon whom service is to be made.

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

Supreme Court of the United States

OCTOBER TERM,1973

No. 73-347

PHILLIPS PETROLEUM COMPANY,
a Corporation,
Petitioner,

vs.

TEXACO INC., a Corporation,
Respondent.

OBJECTION OF TEXACO INC. TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OUT OF TIME

Respondent Texaco Inc. objects to the motion of Northern Natural Gas Company, Northern Helex Company, Cities Service Gas Company, Cities Service Cryogenics, Inc. and Cities Service Helex, Inc. for leave to file a brief as *Amicus Curiae*. The reasons for withholding consent to their motion are as follows:

1. Movants are parties in other cases in the nature of interpleader, wherein the jurisdictional question decided by the Court of Appeals does not exist. Movants seek to inject non-jurisdictional questions here, in an effort to re-litigate the precise questions which were determined

against them in *Northern Natural Gas Company, et al.* v. *Grounds, et al.*, 441 F.2d 704 (10 Cir.), cert. denied and rehearing denied, 404 U.S. 951, 1063.

Whether Texaco's cause of action having its genesis in the construction and application of federal statutes may, or may not, be maintained in federal court cannot affect the accounting phase of the Kansas helium litigation in which movants are parties. In that phase, the value of helium supplied to movants is being determined.

2. Determination of the jurisdictional issue would have an insignificant, de minimus, impact on any litigation. Since March, 1971, when movants' liability to pay a reasonable value for helium supplied to them was decided in *Northern*, supra, only two cases have been filed in which federal jurisdiction is dependent on existence of a federal question—the instant case and *Cities Service Oil Company* v. *Phillips Petroleum Company*, No. 73-C-230 (N.D. Okla.).

Movants' position is tinged with irony. They invoked the federal interpleader statutes in order to enjoin and avoid helium litigation in state courts, yet now pretend to be concerned about litigating in federal court.

Respectfully submitted,

PHILIP R. WIMBISH*
ELMER W. ADAMS
P. O. Box 2420
Tulsa, Oklahoma 74102
Attorneys for Respondent

*Counsel upon whom service is to be made.